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17 Attorneys for Defendant
INTEL CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

22 IN RE INTEL LAPTOP BATTERY) CASE NO. 5:09-cv-02889-JW
LITIGATION)
23) **STIPULATED PROTECTIVE ORDER**
24) Judge: Honorable James Ware
25)
26) Complaint Filed: June 26, 2009
27) Trial Date: None
) Discovery Cutoff: None
)

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public disclosure
 4 and from use for any purpose other than prosecuting this litigation would be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords extends only to the
 8 limited information or items that are entitled under the applicable legal principles to treatment as
 9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
 10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
 11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
 12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
 15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
 17 medium or manner generated, stored, or maintained (including, among other things, testimony,
 18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 19 discovery in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of how generated,
 21 stored or maintained) or tangible things that qualify for protection under standards developed under
 22 F.R.Civ.P. 26(c).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
 24 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
 25 create a substantial risk of serious injury that could not be avoided by less restrictive means.

26 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 27 Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
 2 Material in this action.

3 2.7 Designating Party: a Party or non-party that designates information or items that it
 4 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential —
 5 Attorneys' Eyes Only."

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
 7 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
 9 to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
 12 support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
 14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 15 consultant in this action and who (1) is not a past or current employee of Intel , (2) in the case of an
 16 expert for any Party but Intel: (a) is not a current employee of or consultant to Advanced Micro
 17 Devices, Inc.; GlobalFoundries, Inc.; Advanced Technology Investment Company; Via
 18 Technologies, Inc., QUALCOMM Inc.; Broadcom Corp.; International Business Machines Corp.;
 19 ARM Holdings plc; Sun Microsystems, Inc.; or Freescale Semiconductor, Inc., or any parents,
 20 subsidiaries, or affiliates of the foregoing ("Intel competitors"), (b) has not in the previous five
 21 years been an employee of or consultant to an Intel competitor, and (c) at the time of retention, is
 22 not anticipated to become an employee of or consultant to an Intel competitor. This definition
 23 includes a professional jury or trial consultant retained in connection with this litigation. For any
 24 potential expert who falls in category (2)(b) above, a Party may provide Intel with the information
 25 required by para. 7.4(a) of this Order and request that Intel consent to that person's service as an
 26 expert, which consent shall not be unreasonably withheld. Intel shall consent or object within
 27 seven court days of receiving such request and required information. If Intel objects, the Parties
 28 will follow the procedures of 7.4(c) of this Order.

1 2.13 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
3 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected Material
6 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
7 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
8 parties or counsel to or in court or in other settings that might reveal Protected Material.

9 4. DURATION

10 Even after the termination of this litigation, the confidentiality obligations imposed by this
11 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
12 otherwise directs.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
15 non-party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. A
17 Designating Party must take care to designate for protection only those parts of material,
18 documents, items, or oral or written communications that qualify – so that other portions of the
19 material, documents, items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
22 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
23 encumber or retard the case development process, or to impose unnecessary expenses and burdens
24 on other parties), expose the Designating Party to sanctions.

25 If it comes to a Party's or a non-party's attention that information or items that it designated
26 for protection do not qualify for protection at all, or do not qualify for the level of protection
27 initially asserted, that Party or non-party must promptly notify all other parties that it is
28 withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 2 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 3 material that qualifies for protection under this Order must be clearly so designated before the
 4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of depositions
 7 or other pretrial or trial proceedings), that the Producing Party affix the legend
 8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at
 9 the top of each page that contains protected material. If only a portion or portions of the
 10 material on a page qualifies for protection, the Producing Party also must clearly identify
 11 the protected portion(s) (e.g., by making appropriate markings in the margins) and must
 12 specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL”
 13 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

14 A Party or non-party that makes original documents or materials available for
 15 inspection need not designate them for protection until after the inspecting Party has
 16 indicated which material it would like copied and produced. During the inspection and
 17 before the designation, all of the material made available for inspection shall be deemed
 18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party
 19 has identified the material it wants copied and produced, the Producing Party must
 20 determine which material, or portions thereof, qualify for protection under this Order, then,
 21 before producing the specified material, the Producing Party must affix the appropriate
 22 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 23 ONLY”) at the top of each page that contains Protected Material. If only a portion or
 24 portions of the material on a page qualifies for protection, the Producing Party also must
 25 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 26 margins) and must specify, for each portion, the level of protection being asserted (either
 27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
 28

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
2 the Party or non-party offering or sponsoring the testimony identify on the record, before
3 the close of the deposition, hearing, or other proceeding, all protected testimony, and
4 further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
6 testimony that is entitled to protection, and when it appears that substantial portions of the
7 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives
8 the testimony may invoke on the record (before the deposition or proceeding is concluded)
9 a right to have up to 20 days to identify the specific portions of the testimony as to which
10 protection is sought and to specify the level of protection being asserted
11 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").
12 Only those portions of the testimony that are appropriately designated for protection within
13 the 20 days shall be covered by the provisions of this Stipulated Protective Order.

14 Transcript pages containing Protected Material must be separately bound by the
15 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"
16 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the
17 Designating Party.

18 (c) for information produced in some form other than documentary, and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior of
20 the container or containers in which the information or item is stored the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
22 only portions of the information or item warrant protection, the Producing Party, to the
23 extent practicable, shall identify the protected portions, and specify, for each portion, the
24 level of protection being asserted (either “Confidential” or as “Highly Confidential –
25 Attorneys’ Eyes Only.”).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
28 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under

1 this Order for such material. If material is appropriately designated as "Confidential" or "Highly
 2 Confidential – Attorneys' Eyes Only" after the material was initially produced, the Receiving Party,
 3 on timely notification of the designation, must make reasonable efforts to assure that the material is
 4 treated in accordance with the provisions of this Order.

5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
 7 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 8 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
 9 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
 10 after the original designation is disclosed.

11.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
 12 confidentiality designation must do so in good faith and must begin the process by conferring
 13 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
 14 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
 15 that the confidentiality designation was not proper and must give the Designating Party an
 16 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
 17 designation is offered, to explain the basis for the chosen designation. A challenging Party may
 18 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
 19 process first.

20.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
 21 designation after considering the justification offered by the Designating Party may file and serve a
 22 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
 23 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
 24 motion must be accompanied by a competent declaration that affirms that the movant has complied
 25 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
 26 specificity the justification for the confidentiality designation that was given by the Designating
 27 Party in the meet and confer dialogue.

28

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
 2 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 3 question the level of protection to which it is entitled under the Producing Party's designation.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 6 produced by another Party or by a non-party in connection with this case only for prosecuting,
 7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 8 the categories of persons and under the conditions described in this Order. When the litigation has
 9 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
 10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in
 12 a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 14 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 15 information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 17 employees of said Counsel to whom it is reasonably necessary to disclose the information
 18 for this litigation;

19 (b) the officers, directors, and employees (including House Counsel) of the
 20 Receiving Party to whom disclosure is reasonably necessary for this litigation;

21 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
 22 is reasonably necessary for this litigation and who have signed the "Agreement to Be
 23 Bound by Protective Order" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters, their staffs, and professional vendors to whom disclosure is
 26 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound
 27 by Protective Order" (Exhibit A);

28

1 (f) during their depositions, witnesses in the action and their attorneys present at
2 the deposition to whom disclosure is reasonably necessary and who have signed the
3 "Agreement to Be Bound by Protective Order" (Exhibit A) except that if a witness is
4 represented by Counsel, Counsel need not sign the "Agreement to be Bound by Protective
5 Order." Pages of transcribed deposition testimony or exhibits to depositions that reveal
6 Protected Material must be separately bound by the court reporter and may not be disclosed
7 to anyone except as permitted under this Stipulated Protective Order.

8 (g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
11 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 (b) House Counsel of a Receiving Party to whom disclosure is reasonably
17 necessary for this litigation;

18 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
19 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by
20 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,
21 below, have been followed;

22 (d) the Court and its personnel;

26 (f) the author of the document or the original source of the information.

27 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL -

28 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

19 (c) A Party that receives a timely written objection must meet and confer with
20 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
21 agreement. If no agreement is reached, the Party seeking to make the disclosure to the
22 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil
23 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
24 motion must describe the circumstances with specificity, set forth in detail the reasons for
25 which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
26 disclosure would entail and suggest any additional means that might be used to reduce that
27 risk. In addition, any such motion must be accompanied by a competent declaration in
28 which the movant describes the parties' efforts to resolve the matter by agreement (i.e., the

1 extent and the content of the meet and confer discussions) and sets forth the reasons
 2 advanced by the Designating Party for its refusal to approve the disclosure.

3 In any such proceeding the Party opposing disclosure to the Expert shall bear the
 4 burden of proving that the risk of harm that the disclosure would entail (under the
 5 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
 6 Material to its Expert.

7 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 8 **LITIGATION**

9 If a Receiving Party is served with a subpoena or an order issued in other litigation that
 10 would compel disclosure of any information or items designated in this action as
 11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
 12 Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if
 13 possible) immediately and in no event more than three court days after receiving the subpoena or
 14 order. Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the
 16 subpoena or order to issue in the other litigation that some or all the material covered by the
 17 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 18 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
 19 caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of this
 21 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
 22 confidentiality interests in the court from which the subpoena or order issued. The Designating
 23 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 24 material – and nothing in these provisions should be construed as authorizing or encouraging a
 25 Receiving Party in this action to disobey a lawful directive from another court.

26 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,

1 the Receiving Party must immediately (a) notify in writing the Designating Party of the
 2 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 3 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 4 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
 5 Be Bound" that is attached hereto as Exhibit A.

6 10. FILING PROTECTED MATERIAL

7 Without written permission from the Designating Party or a court order secured after
 8 appropriate notice to all interested persons, a Party may not file in the public record in this action
 9 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
 10 with Civil Local Rule 79-5.

11 11. FINAL DISPOSITION

12 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
 13 after the final termination of this action, each Receiving Party must return all Protected Material to
 14 the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,
 15 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
 16 Protected Material. With permission in writing from the Designating Party, the Receiving Party
 17 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
 18 Material is returned or destroyed, the Receiving Party must submit a written certification to the
 19 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
 20 deadline that identifies (by category, where appropriate) all the Protected Material that was
 21 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 22 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
 23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 24 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
 25 even if such materials contain Protected Material. Any such archival copies that contain or
 26 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
 27 (DURATION), above.

28

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
5 no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered by
8 this Protective Order.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: December , 2009 GIRARD GIBBS LLP

By: _____ /s/ Eric H. Gibbs
Eric H. Gibbs

Interim Class Counsel for PLAINTIFFS

DATED: December , 2009 NARANCIC & KATZMAN, PC

By: _____ /s/ Perry J. Narancic
Perry J. Narancic

Attorneys for Defendant
BUSINESS APPLICATIONS PERFORMANCE CORP

20 DATED: December , 2009 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Raoul D. Kennedy
Raoul D. Kennedy

Attorneys for Defendant
INTEL CORPORATION

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

January 14, 2010

27 DATED: December xxxx 2009

Patricia V. Trumbull
The Honorable James Ware Patricia V.
United States District Judge
Magistrate

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of In re Intel Battery Life Litigation, Case
7 No. CV-09-02889-JW. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
10 any manner any information or item that is subject to this Stipulated Protective Order to any person
11 or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
14 Order, even if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number]
17 as my California agent for service of process in connection with this action or any proceedings
18 related to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____

24

25

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28